

May 26, 2006

VIA EMAIL

John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: Comments on Tentative Order No. R9-2006-0064

Dear Mr. Robertus:

Fallbrook Public Utility District (“Fallbrook”) appreciates that the Regional Water Quality Control Board for the San Diego Region (“Regional Board”) has postponed the proposed reissuance of a permit for Fallbrook’s recycled water distribution until August of 2006 as there are many issues that need to be discussed to determine if such a permit should be issued. Fallbrook sends this comment letter early to facilitate such discussions.

The primary issue is the form of the permit to be adopted. Fallbrook has many times requested the issuance of a Water Reclamation Requirements (“WRRs”) for its water reclamation facilities. However, the Regional Board persists in attempting to issue a permit other than that requested. The following comments are submitted on behalf of the Fallbrook on the proposed Tentative Waste Discharge Requirements for Treatment Plant No. 1 Reclamation Project in San Diego County, Tentative Order No. R9-2006-0064 (“Tentative Order”). It is hoped that in response to these comments the Regional Board will convert the Tentative Order to a WRRs or provide a compelling legal reason why this permit cannot be issued solely as a WRRs. If the requested changes are not made, then water recycling may become an option too expensive for Fallbrook to continue to pursue.

1. The Tentative Order Must Be Revised to Remove Reference to “Waste Discharge Requirements.”

Regional Board staff refers to the Tentative Order as a “Waste Discharge Requirements” (“WDRs”) issued “pursuant to Water Code Section 13263” that also contains water recycling requirements. *See* Tentative Order at page 5, Finding 15; *see also* Fallbrook’s Specific Comment below at Comment 5.a. For the reasons set forth below, Fallbrook requests that the Regional Board revise the Tentative Order such that the order ultimately provided to the Regional Board members for consideration is solely a WRRs issued pursuant to Water Code section 13523 rather than as a joint WDR/WRRs issued under Water Code section 13263.

The reclamation activities performed by Fallbrook under this Tentative Order do not constitute disposal or the discharge of “waste”¹ that would require WDRs. Rather, Fallbrook is seeking to use “recycled water” for a direct beneficial use for irrigation and agricultural uses that requires only WRRs to be issued under Water Code sections 13522.5 and 13523.²

The Water Code defines “recycled water” as “water, which as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.” See Water Code §§13050(n) and 13575(a)(3)(emphasis added). In this case, Fallbrook’s disinfected tertiary-treated water is the result of the treatment of “waste,” and this water is suitable for a direct beneficial use or a controlled use that would not otherwise occur. See 22 Cal. Code Regs. §§60301.220, 60301.225, 60304-60307; see also Water Quality Control Plan, San Diego Region (“Basin Plan”) at 4-13, and at 4-5 (confirming the issuance of WRRs and Master Reclamation Permits for reclamation activities). Thus, Fallbrook’s “recycled water” is not considered a “waste” under the Water Code, and should not be regulated as such by the Regional Board under WDRs.

The California Legislature has expressly recognized the safety and benefit of “recycled water,” and that such water is not to be considered a “waste.” The Water Code states, “[i]t is hereby declared that the people of the state have a primary interest in the development of facilities to recycle water containing waste to supplement existing surface and underground water supplies and to assist in meeting the future water requirements of the state.” See Water Code §13510 (emphasis added); see also Water Code §13512; San Diego Basin Plan at 4-28. Water Code section 13511 states, in part, “[t]he Legislature further finds and declares that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety, and welfare of the people of the state...” Water Code section 13529(f) states that the “use of recycled water has proven to be safe and the State Department of Health Services is drafting regulations to provide for expanded uses of recycled water.” Finally, Water Code section 13551 states, in part, “a person or public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, shall not use water from any source of quality suitable for potable domestic use for non-potable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is available...” See also Water Code §13550(a). In fact, the use of potable water for irrigation uses is legislatively determined to be an “unreasonable use of the water within the meaning of Section 2 of Article X

¹ “Waste” is defined in Water Code Section 13050(d) as “sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.”

² It is important to note that the issuance of WRRs pursuant to Water Code section 13523 does not require the concurrent issuance of WDRs. In fact, WRRs may not even be required if, upon consultation with the Department of Health Services (“DHS”), it is determined that such a permit is not necessary. Water Code §13523(a); §13524 (identifying the option of “a regional board determine[ing] that no requirements are necessary”). It is unclear from the Tentative Order or accompanying Fact Sheet whether this consultation with DHS ever occurred in relation to Fallbrook’s recycled water use.

of the California Constitution if recycled water is available.” Water Code § 13550.

In this case, Fallbrook has requested and continues to request WRRs pursuant to Water Code section 13523 for purposes of operating its reclamation and recycling activities. However, the Regional Board staff has decided to issue a Tentative Order combining WDRs and WRRs, which can only lawfully be done as a Master Reclamation Permit under the authority of Water Code Sections 13523.1 and 13263(h).³ By including WDRs, the Regional Board is fundamentally altering the regulatory landscape that should be applicable to Fallbrook’s reclamation projects. This action unnecessarily subjects Fallbrook to additional enforcement and liability under Water Code section 13350, and certainly does not encourage the use of recycled water. Other recent permits around the State, including the Los Angeles Region’s Harbor Water Recycling Project, which involved the use of advanced treated recycled water for groundwater injection, have been issued only as WRRs.

The only possible reasons Fallbrook can speculate why the Regional Board is using a WDR for this permit are the following:

- 1) The previous recycled water permit was issued essentially as a Master Reclamation Permit, including both WDR and WRR provisions. At the time Order No. 91-39 was issued with WDR provisions, many of the requirements and legislative findings encouraging recycled water use were not effective. *See e.g.*, A.B. 704 (1993); A.B. 1247 (1995). Furthermore, at that time, Fallbrook presumably consented to the issuance of that Order.
- 2) The Regional Board is seeking a permit fee since fees are set for WDRs, but not for WRRs.

REQUESTS: Remove “Waste Discharge Requirements” from the title and body of the Tentative Order, and replace with “Water Reclamation Requirements.”

Remove the terms “waste,” “effluent” and “discharge” and instead use the terms “recycling,” “reuse,” “use,” or “recycled water” to define the use of this valuable resource.

2. The Biosolids Provisions Should be Removed from the Permit as Duplicative.

The previous Order No. 91-39 and this Tentative Order contain not only recycled water requirements, but also biosolids provisions. However, the provisions for biosolids regulation are not necessary as Fallbrook’s recently adopted NPDES permit (Order No. R9-2006-0002, pg. 28-29, Provisions VI.C.2.c.1-9) contains requirements for handling, treatment, use, management and disposal of sludge (biosolids). Duplicative permitting of biosolids in this Tentative Order is

³ Since, as stated previously, recycled water is not a waste, only Water Code section 13263(h) can be used to justify regulating recycled water with a WDRs. No other subsection of section 13263 references “recycled water.”

unnecessary. Without the biosolids requirements, there are no actual wastes being regulated in the proposed WDRs.

Specifically, Fallbrook requests that the Regional Board remove the last sentence in Finding 16, remove Finding 22 from the Tentative Order, and remove Provision E. of the MRP.

REQUEST: Remove all references to regulation of sewage sludge and biosolids as this is regulated in Fallbrook's recently adopted NPDES Permit/WDRs.

3. The Tentative Order Improperly Requires Recycled Water to Meet Primary and Secondary Drinking Water Standards.⁴

The Tentative Order requires that recycled water not contain constituents exceeding the most current applicable Maximum Contaminant Levels (MCLs) (primary and secondary drinking water standards). See Tentative Order at Discharge Specifications B.3, B.4., and B.6. The inclusion of these requirements as end-of-pipe limits is inappropriate for the beneficial reuse of recycled water.

MCLs are adopted by the Department of Health Services (DHS) to apply only to the direct supply of water to the public for drinking water purposes. See *accord* 22 C.C.R. §64449(a) (stating that secondary MCLs shall not be exceeded in the water supplied to the public). The MCLs set forth in Title 22 of the California Code of Regulations were intended only to apply to drinking water treatment facilities providing potable water at the tap or point-of-use, not as specifications applicable to reclamation and/or reuse projects. See 22 C.C.R. §64431 and §64444. Since the recycled water produced by Fallbrook is not used for direct potable purposes, the Title 22-based MCL requirements are unnecessarily restrictive and inappropriate. For this reason, the Regional Board should remove reference to MCLs in the Tentative Order. Given the inapplicability of MCLs to Fallbrook's reclamation activities, the Regional Board should also refrain from requiring Fallbrook to monitor for each and every MCL set forth in Title 22.

The Regional Board's use of Title 22 criteria is also inconsistent with how DHS uses and enforces MCLs. Secondary MCLs are set for constituents that may adversely affect the taste, odor, or appearance of drinking water, and are directly related to consumer "acceptance" or "dissatisfaction" with the drinking water provided through a community water system. See 22 C.C.R. §64449(a). If a secondary MCL for a constituent contained in Table 64449-A is exceeded in drinking water, an investigation by DHS and a study by the water supplier is required to determine actual consumer acceptance or dissatisfaction with the drinking water that does not meet the particular MCL. See 22 C.C.R. §64449(d). If there is no community water system, as in this case, there are no consumers to be surveyed and, thus, no acceptance or

⁴ Even though Fallbrook expects the Regional Board to eliminate the WDR portion of the Tentative Order pursuant to Fallbrook's comments herein, Fallbrook is nonetheless including comments regarding the objectionable WDR-related requirements. If a WDR is maintained, the Regional Board must perform a thorough Water Code section 13263 analysis, including a section 13241 analysis supported by evidence in the record. Finding 41 of the Tentative Order is legally inadequate.

dissatisfaction to measure. Nonetheless, under the Regional Board's Inorganic Chemicals water quality objective and its application in the Tentative Order, Fallbrook may be exposed to serious liability for non-compliance with provisions of a WDR, unlike situations where MCLs are exceeded under drinking water regulations. *See, e.g.*, Water Code §13350.

In addition, DHS is permitted to *waive* the requirement to meet secondary MCLs based upon consumer acceptance or economic considerations. *See* 22 C.C.R. §64449 (e)(1) and (2). However, exceedances of the secondary MCLs in this case may subject Fallbrook to liability under the Water Code. *Id.* Such a result was never intended by Title 22. Thus, the inclusion of MCLs as enforceable waste discharge requirements is unwarranted and inappropriate.

The application of MCLs on the basis and for the purpose of protecting underlying groundwater from potential incidental recharge from Fallbrook's irrigation projects is inappropriate.⁵ Irrigation projects properly using agronomic rates may, at most, provide minor, incidental recharge to the underlying groundwater basin. However, when attenuation and other factors are taken into account, the impact to the groundwater table is expected to be negligible. This is precisely why the California Legislature provided an entirely different statutory scheme for the beneficial reuse of recycled water. In fact, DHS does not even apply or require the application of primary and secondary drinking water standards to non-potable irrigation projects.

Furthermore, no justification exists to directly apply these drinking water standards simply because no attenuation or quantity data is available. Because Water Code section 13523 does not require the application of MCLs to recycled water in the first place, the Regional Board bears the burden to demonstrate that the requirements imposed are necessary and reasonable. Water Code §§13523(a), 13000. Finally, by applying primary and secondary MCLs as direct limits, the Regional Board is discouraging the use of recycled water throughout this region, which is contrary to State law and policy.

If the Regional Board persists with applying MCLs to Fallbrook's reclamation activities via WDRs or through some other means, the Regional Board must refrain from applying Title 22 drinking water standards at the "end of pipe," and instead, consider site-specific factors such as attenuation of recycled water constituents in groundwater, the quantity of recycled water actually reaching the ground water aquifer, and the dilution provided by the groundwater aquifer when calculating requirements. *See* State Board Order No. 2003-0013 (requiring the Regional Board to consider dilution, flow, attenuation, and other technical issues when determining appropriate regulatory requirements).

Here, public water supplies are fully protected by the high levels of treatment, by the fact that any reclaimed water, if it reaches groundwater, is diluted in the aquifer, and because the *compounds are monitored by drinking water suppliers and there will likely be further reductions prior to serving the water to customers.* The public benefit of reclamation and reuse in water

⁵ It should be noted that Fallbrook is not proposing to inject or spread recycled water for the purpose of directly recharging groundwater.

starved Southern California outweighs the possibility that stringent limitations might discourage proponents from undertaking this or similar projects. *See* SWRCB Order No. 2006-01 at pg. 6.

REQUEST: Remove drinking water Primary and Secondary MCLs as enforceable limits from the Tentative Order applicable to non-potable irrigation use.

4. The Tentative Order Puts at Risk the Continued Use of Recycled Water in the Fallbrook Area.

Based on recycled water data included in the Tentative Order, the recycled water may not be able to consistently comply with several of the proposed discharge specifications. *Compare* Tentative Order's table on pg. 7 containing recycled water data with tables on pgs. 17-18 setting forth discharge specifications. Thus, based on available plant performance data, Fallbrook will not be able to reliably comply with the Tentative Order. This could result in sporadic delivery, or complete termination, of recycled water delivery from Fallbrook thereby requiring the use of potable water sources in its place.

Delivery of recycled water must be dependable to be used by customers. Customers in many cases cannot easily be switched from recycled water to a potable water supply. Industrial users, in particular, require reliable service as unplanned shutdowns could affect production of products or processes. It is unlikely that most water recycling operations in Southern California would be able to comply with this type of permit. This Tentative Order's requirements are far beyond what is typical for similar projects throughout the State. The Regional Board's proposed actions will, at the very least, deal a serious blow to the cost effectiveness and increased use of recycled water in the Fallbrook area and will likely result in a broad reduction in recycled water use.

Fallbrook would also like to remind the Regional Board of the strong public policy in favor of reasonable regulation of reclamation projects, such as the Fallbrook project. *See, e.g., Petition of Water Replenishment District of Southern California, Water Reuse Association and County Sanitation Districts of Los Angeles County* (Requirements for Alamitos Barrier Recycled Water Project, State Water Resources Control Board Order No. WQ 2006-0001 (remanding permit for removal of overly stringent discharge requirements that could pose compliance problems, and therefore, increase liability/enforcement, based on Water Code's strong policy in favor of encouraging water recycling). As presently drafted, the Tentative Order will discourage the use of Fallbrook's recycled water for irrigation, and unnecessarily increase liability and the potential for enforcement action.

In addition, if costs and efforts to comply become more than can be recouped by recycling the water, Fallbrook will no longer have an incentive to recycle and could merely dispose of its effluent through Ocean outfall, which would be a waste of a valuable resource.

REQUEST: Remove primary and secondary drinking water MCLs and additional monitoring not required for Title 22 Recycled Water.

5. The Regional Board's Adoption and Application of the Basin Plan's Chemical Constituents Water Quality Objective for Ground Water Violates State Law.

The Regional Board's adoption and application of the narrative water quality objective for "Inorganic Chemicals," specifying that ground waters designated for use as domestic or municipal supply ("MUN") shall not contain concentrations of inorganic chemicals in excess of the MCLs in effect at the time the chemical constituents objective was adopted *and including any prospective, future changes to the MCLs as the changes take effect*, violated the Water Code. See Basin Plan at 3-8 and 3-9; Water Code §§13241 and 13000. Water Code section 13241 requires the Regional Board to consider the social, environmental and economic impacts of water quality objectives prior to adoption. See Water Code §13241(a)-(f). Furthermore, Water Code section 13242 requires that the Regional Board adopt an implementation plan for meeting the adopted objectives and a timeline for doing so. Moreover, under Water Code section 13240, Basin Plans and the objectives contained therein must be reviewed and revised periodically. Fallbrook is not aware of any evidence to indicate that the Regional Board complied with Water Code sections 13241 or 13242 when it initially adopted the water quality objective for Inorganic Chemicals and the corresponding MCLs in effect at that time, or that the Regional Board has met its statutory mandate to review and revise this objective as required under Water Code section 13240.

By using a prospective, incorporation-by-reference method of adopting water quality objectives for ground water basins designated MUN, the Regional Board also abdicated its responsibility to consider the factors contained in Water Code sections 13241 and to develop an implementation plan under Water Code section 13242 at the time the water quality objective was adopted and each time a new or more stringent MCL was or is incorporated into Title 22. See *accord* Office of Administrative Law ("OAL"), Notice and Decision Re: Approval and Partial Disapproval of a Rulemaking Action on the Adoption of the Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (OAL File No. 00-0317-15)(Apr. 28, 2000) (finding that prospective incorporation-by-reference "is of dubious validity").

Furthermore, through the use of the prospective, incorporation-by-reference method of adopting water quality objectives for those water bodies or ground water basins designated MUN, the Regional Board failed to comply with the applicable public notice and participation requirements of the Water Code. *Id.* at 7; *see also* Water Code §13244. Finally, by utilizing this short-cut method of adopting water quality objectives, the Regional Board failed to comply with Water Code section 13000, providing for reasonable water quality regulation.

REQUEST: Remove reference to Primary and Secondary MCLs imposed pursuant to the Basin Plan's Inorganic Chemicals Water Quality Objective for Groundwater.

6. The Additional Monitoring Burden Placed on Recycled Water is Not Warranted.

The Regional Board has included substantial new monitoring and reporting requirements. The sampling and analytical costs to comply with the Monitoring and Reporting Program ("MRP")

associated with the Tentative Order are significant. Sampling and analytical costs for the additional monitoring will be expensive as will be the costs for outside certified lab testing costs, equipment rental, sampling labor, and transportation costs. Additionally, some of the constituents that require monitoring may not even have analytical methods developed for testing. The proposed sample collection activities represent additional staff-hours (both in house and contracted out) every year not currently budgeted or funded. It is estimated that the equipment and labor involved with the requirement for continuous monitoring and recording of chlorine will add \$20,000 in additional costs, just for chlorine issues. In addition, Fallbrook has never before been required to monitor for the nearly 70 constituents contained in the Monitoring and Reporting Program, many of which that do not have limits specified. It is unclear the value of this data since it appears to duplicate much of the monitoring required by Fallbrook's NPDES permit. In addition, the MRP mandates the construction of three (3) groundwater monitoring wells, which will cost approximately \$20,000 to \$50,000 to install, if easements and access can be obtained to do so at no cost.

The burden of these additional monitoring requirements and limits have not been assessed and weighed against the need for the information as required under Water Code Section 13225(c) and 13267(b) and, thus, these requirements are improperly placed on this recycled water project. Requirements to monitor nearly all priority drinking water pollutants in both the recycled water and the ground water will not encourage the use of recycled water for non-potable projects or the conservation of scarce potable water resources. The groundwater monitoring may be of little value since potable water used for local irrigation contains many of the same constituents and yet is not being held to the same strict standards as required by the Tentative Order. Thus, there would be no way to conclusively determine that Fallbrook's recycled water, even were it to reach local ground water, is affecting the quality of the water of the state.

Fallbrook requests that all water quality monitoring not necessary to determine compliance with appropriately imposed recycled water limits be deleted from the Tentative Order. The only water quality monitoring that should be imposed by the Regional Board are those required by Title 22 for disinfected tertiary-treated recycled water, such as continuous turbidity, daily coliform and disinfection requirements, and dissolved oxygen. In fact, these are typical requirements included in WRRs statewide for irrigation projects using recycled water, and what is required by the Department of Health Services' reclamation criteria. If the Regional Board has concerns over the ultimate use of the recycled water, then the Regional Board should issue separate water recycling requirements or WDRs to those end users.

REQUEST: Remove all of the proposed monitoring requirements except those required by DHS for Title 22 Recycled Water used for Irrigation and those constituents which are presently included in the existing WDRs.

7. Specific Permit Comments:

- a. Finding 15. Although not titled as such, this Order is being issued as a Master Reclamation Permit without Fallbrook's consent.**

As specified in Finding 15, the Tentative Order is being issued pursuant to Water Code sections 13263 and 13500-13556. In addition, the Tentative Order, which applies to the producer and distributor of recycled water, required Fallbrook to “establish and enforce rules and regulations which apply to users of its recycled water.” This is a Master Reclamation Permit requirement, as are the reporting requirement contained in the MRP at pages 42-43. *See* Water Code §13523.1(b)(3), (4), and (5).

Reclamation projects in California can be governed by either “WRRs” issued pursuant to Water Code section 13523 or a “Master Reclamation Permit,” which can be a joint WDR/WRR, issued pursuant to Water Code section 13523.1. *See* Basin Plan at pg. 4-13. Importantly, the issuance of a “Master Reclamation Permit” by the Regional Board must only be “*with the consent of the proposed permittee,*” given the potentially increased breadth of regulations (*i.e.*, inclusion of WDRs and heightened enforcement due to increased responsibility overseeing recycled water users). *See* Water Code section 13523.1 (stating “Each regional board, after consulting with, and receiving the recommendations of, the State Department of Health Services and any party who has requested in writing to be consulted, with the consent of the proposed permittee, and after any necessary hearing, may, in lieu of issuance of ... water reclamation requirements pursuant Section 13523 for a user of reclaimed water, issue a master reclamation permit ...”) (emphasis added).

In this case, Fallbrook *does not consent* to the issuance and/or use of a “Master Reclamation Permit” to regulate Fallbrook’s beneficial reuse projects. Fallbrook did not request a Master Reclamation Permit, and Regional Board staff did not obtain Fallbrook’s consent prior to issuing the Tentative Order for comment and hearing.

Fallbrook, therefore, requests that the Regional Board revise the Tentative Order such that the order ultimately provided to the Regional Board members for consideration and/or adoption constitutes solely “WRRs” issued pursuant to Water Code section 13523 rather than a Master Reclamation Permit containing joint WDR/WRRs.

b. Finding 35 and Provisions B.3 - B.4. Daily limits are not necessary.

The groundwater objectives to be protected are all set as long term annual averages for human health protection over 70 years of exposure from drinking water from that source. Further, the objectives are set to not “be exceeded more than ten percent of the time in a one-year period.” *See* Basin Plan at Tables 3-2 and 3-3. As such, no need exists to set daily limits on the recycled water and statistically derived annual average limits would be adequate to protect the quality of the groundwater.

c. Findings included without supporting evidence.

The Tentative Order includes many findings that do not contain supporting evidence. For example, Finding 36 of the Tentative Order and the findings on page 3 of the Fact Sheet contain unsupported findings regarding the fate and transport of nitrogen compounds. Similarly, Finding

41 concludes that the Regional Board considered the 13241 factors, but the Tentative Order and the Fact Sheet contain absolutely no evidence of these considerations. Findings unsupported by evidence constitute a *per se* prejudicial abuse of discretion.

d. Many of the reuse restrictions are more stringent without an explanation as to the necessity of such changes.

Many of the recycled water limits are more stringent than before without any evidence as to why more stringent requirements are necessary. Many of these may be byproducts of the new calculations being performed to derive the limits, but others do not seem to have an explanation. For example, the turbidity requirements used to be based on “average operating turbidity,” but are now “daily average” values, which appears to be much more restrictive and may cause compliance problems. Because the applicable water quality objective for the groundwaters at issue is 5 NTU as an annual average not to be exceeded more than 10% of the time, the restrictions included in the Tentative Order appear unduly restrictive.

e. The Order contains undefined terms.

The Tentative Order at Provision C for the first time uses the term “Recycled Water Agency,” however that term is undefined.

In addition, other terms, such as “toxic materials” used in Provision A.4(d), are also undefined. Many, if not all, constituents and even water itself can be toxic in excessive quantities. This term also does not state what organism is target for any analysis of toxicity. Because these terms are vague, they should be removed or defined in the Tentative Order prior to adoption.

Another provision that is not adequately defined is the requirement that signs be “translated into Spanish and other appropriate languages” in Provision D.1(m). Since tens or hundreds of languages are spoken in California, it would be difficult to determine which languages are appropriate. Given the proximity of Fallbrook to Mexico, Spanish would be considered to be appropriate. However, Fallbrook requests that the reference to “and other appropriate languages” be removed as not adequately defined and overbroad.

f. The Order unlawfully delegates modification authority to the Executive Officer.

Water Code Section 13223(a) specifically excepts modification of any waste discharge requirement from being delegated to the Executive Officer by the Regional Board. Therefore, if the Order is adopted as proposed as a WDR, then several provisions therein contain unlawfully delegated authority to the Executive Officer. However, if modified to be solely a WRR as requested by Fallbrook, those provisions can remain.

If issued as a WDR, at least the following provisions are unlawful:

Tentative Order, Provision D.1(i) – allows the Executive Officer to modify storage requirements

Tentative Order, Provision E.4. – allows revisions to the MRP by the Executive Officer

MRP, Provision A.1. – allowing amendment of monitoring points

- g. Other comments and edits to the Tentative Order are included in the redline version attached hereto as Exhibit A.**

As it now stands, the Tentative Order being proposed is overly onerous and Fallbrook does not consent to its issuance. However, Fallbrook looks forward to meeting with your staff to discuss how to implement the requested revisions expeditiously such that Fallbrook's provision of recycled water can continue under a reasonable WRR-type permit.

Respectfully submitted,

DOWNEY BRAND LLP



Melissa A. Thorme
Special Counsel to Fallbrook

777447.1